

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 94-07363 IN THE )  
NAME OF DAVID JEFFCOAT ) **FINAL ORDER**  
)

## FINDINGS OF FACT

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

3. In June 1997, the Applicant and Protestant entered into an agreement by which the Protestant would withdraw his protest based on certain restoration work by the Applicant. The Protestant does not believe the terms of the agreement have been met by the Applicant and hence has not withdrawn his protest. The items in the agreement are not within the jurisdiction of the Department.

4. On June 18, 1998, the Department conducted a hearing in the matter. The Applicant was present and represented himself. The Protestant was not present but was represented by Eric Smith, attorney at law.

5. Eric Smith advised that safety of dam considerations as related to public interest were the concern of the Protestant. The other five (5) potential issues described in Section 42-203A(5), Idaho Code, were not items of protest.

6. No exhibits were offered for the record by either the Applicant or the Protestant.

7. The hearing officer officially noticed the Department's water right file for the application, past decisions and orders of the Department, water right records, well driller reports, water measurements and stream flow records in Department files including U.S. Geological Survey reports.

8. The Applicant advised that the ponds he intended to construct are now completed and that he is raising fish for recreational purposes in some of the ponds. All ponds consist of an excavation except for one (1) on which a small dam has been constructed. The Applicant described that originally he constructed one (1) pond partially on the Protestant's property which he has since tried to mitigate by replacing top soil in the excavated area and by planting trees.

9. The Protestant's property is generally located upgradient from the ponds constructed by the Applicant.

10. The Department administers the construction and operation of certain dams as provided in Chapter 17, Title 42, Idaho Code.

#### CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will

conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Use of water as proposed in the application will not reduce the quantity of water under existing water rights.

3. The water supply itself is sufficient for the purposes intended.

4. The application is made in good faith and not for delay or speculative purposes.

5. The Applicant has sufficient financial resources with which to complete the project.

6. The application does not conflict with the local public interest.

7. The application is not contrary to the conservation of water resources within Idaho.

8. The Department should approve the application with certain conditions and limitations.

#### ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 94-07363 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the right is subject to all prior water rights.
2. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before **August 1, 2000**.

3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. If the dams are large enough to fall within the Department's jurisdiction, storage of water under this right is contingent upon the certification of the dams and authorization of storage per the dam safety provisions of the Idaho Code.
5. The issuance of this right does not grant any right-of-way or easement across the land of another.
6. Recreation storage use is for three fishing and swimming ponds.

Signed this 4<sup>th</sup> day of August, 1998.

  
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KARL J. DREHER  
Director

State of Idaho  
Department of Water Resources

# Permit To Appropriate Water

NO. 94-07363

Proposed Priority: September 1, 1995

Maximum Storage Volume:

1.6 AF

This is to certify, that DAVID JEFFCOAT  
HC 1 BOX 246  
KELLOGG ID 83837

has applied for a permit to appropriate water from:

SPRINGS	tributary of	ELK CREEK
UNNAMED STREAM	tributary of	ELK CREEK

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
RECREATION STORAGE	01/01 to 12/31		1.6 AF
FIRE PROTECTION STORAGE	01/01 to 12/31		1.6 AF
	Totals		1.6 AF

LOCATION OF POINT(S) OF DIVERSION:

SENE , Sec. 8, Township 48N, Range 03E  
SHOSHONE County

PLACE OF USE: RECREATION STORAGE

TWN RGE SEC

48N 03E 8

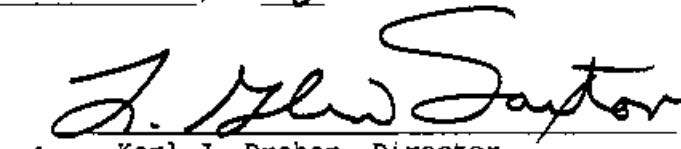
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CONDITIONS OF APPROVAL AND REMARKS

1. See Final Order for conditions and limitations for use of water under this approval.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.  
Witness the signature of the Director, affixed at Boise, this

4<sup>th</sup> day of August, 1998.

  
for Karl J. Dreher, Director